

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc.)
(VELCO) and Green Mountain Power Corporation)
(GMP) for a certificate of public good, pursuant to 30)
V.S.A. Section 248, authorizing VELCO to construct)
the so-called Northwest Vermont Reliability Project,)
said project to include: (1) upgrades at 12 existing)
VELCO and GMP substations located in Charlotte,)
Essex, Hartford, New Haven, North Ferrisburgh,)
Poultney, Shelburne, South Burlington, Vergennes,)
West Rutland, Williamstown, and Williston,)
Vermont; (2) the construction of a new 345 kV)
transmission line from West Rutland to New Haven;)
(3) the reconstruction of a portion of a 34.5 kV and 46)
kV transmission line from New Haven to South)
Burlington; and (4) the reconductoring of a 115 kV)
transmission line from Williamstown to Barre,)
Vermont –)

Order entered: 12/14/2005

ORDER ON RECONSIDERATION RE WAIVER OF COMMENT PERIOD ON PERMITS

Introduction

On November 10, 2005, the Public Service Board ("Board") issued an Order in response to a petition filed by Vermont Electric Power Company, Inc. ("VELCO"), pursuant to 30 V.S.A. § 248(k), for (1) a waiver of the default four-week comment period on permits for the 345 kV transmission line and the New Haven substation, and (2) authorization to begin site preparation and construction of those facilities upon receipt of all required permits. The November 10 Order reduced the comment period to one week for the 345 kV line and the New Haven substation.

On November 21, 2005, pursuant to V.R.C.P. 59(e), VELCO filed a request for reconsideration of the November 10 Order. In its reconsideration request, VELCO contends that the Board incorrectly concluded that Section 248(k) does not apply when a Certificate of Public Good ("CPG") has already been issued. VELCO further contends that the one-week comment period would delay site work this December, thereby jeopardizing the 2006 in-service date. In its

November 21 filing, VELCO again asks that the Board, pursuant to 30 V.S.A. § 248(k), waive completely the comment period. In the alternative, VELCO asks that the Board, pursuant to V.R.C.P. 60(b)(6), grant that same relief.

On November 22, 2005, the Board issued a notice that it would hold a preliminary hearing on VELCO's request on December 6, 2005.

On December 2, 2005, the Vermont Department of Public Service ("Department") filed a response to VELCO's November 21 motion. The Department opposes VELCO's motion on a number of grounds, among them the contention that Section 248(k) does not apply to the present circumstances. The Department further maintains that the relief VELCO seeks would instead be available through reconsideration of the Board's June 8, 2005, Order in this Docket, which established the four-week comment period following the filing of permits.

On December 6, the Board convened the preliminary hearing as noticed. At the outset of the hearing, VELCO stated that it was withdrawing its request for relief under Section 248(k), and wished to proceed with its Rule 60(b)(6) request. Because the hearing had been noticed as a preliminary hearing under Section 248(k), and not as a hearing on VELCO's Rule 60 motion, the Board determined that it could not proceed with the hearing. The parties agreed on, and the Board established, a schedule calling for VELCO to file, by December 7, 2005, an affidavit or affidavits in support of its November 21 motion, with responses by the other parties due by December 13, 2005.

On December 7, 2005, VELCO filed an affidavit by Thomas Dunn in support of its Rule 60(b)(6) motion.¹ In his affidavit, Mr. Dunn describes the nature of and schedule for the construction work associated with the 345 kV line and the New Haven substation. Mr. Dunn addresses the importance of starting the construction work as soon as possible after receipt of the required permits, the implications on the overall project schedule of delays in commencing construction, and the cost and reliability consequences if the 345 kV line and New Haven substation are not in service by the end of 2006.

1. On December 8, 2005, VELCO filed a letter requesting to strike one sentence from Mr. Dunn's affidavit, in light of an order issued by the Federal Energy Regulatory Commission on December 5, 2005. We grant this request, and the sentence is hereby stricken from the affidavit.

On December 12, 2005, the Town of New Haven filed a letter opposing VELCO's motion for reconsideration. New Haven asserts that the one-week comment period is barely adequate, and questions whether all parties to this proceeding were properly served with VELCO's motion.

On December 13, 2005, the Department filed comments stating that if the Board determines that it should grant some further relief to VELCO, the Board need only exercise its discretion to approve final design plans without waiting for comments on other permits. The Department further recommends that the Board grant relief to VELCO, with the provisions that:

(a) [the Board] places VELCO on notice that VELCO proceeds with construction at its own risk, and that the Board may require VELCO to remediate impacts or reconstruct the project or a portion thereof; and (b) the Board specifies that, if there is a difference between the plans approved by the Board and the requirements of other agency permits, VELCO must obtain Board approval of revised final design plans prior to construction.

In the alternative, the Department proposes that the Board consider granting relief only with respect to the New Haven substation, because the need to commence construction is a more imminent issue for the substation than for the 345 kV line.

Discussion

We decline to further reduce or eliminate the comment period on required permits. In this proceeding, VELCO relied upon yet-to-be-issued permits to create rebuttable presumptions of compliance with statutory criteria. Board precedent and principles of due process require that the other parties have an opportunity to rebut those permits prior to final Board approval.² Furthermore, while the granting of permits may not be within VELCO's control, the timing of permit applications was. It would thus be especially unfair to the other parties to deny them the opportunity to challenge the permits upon which VELCO would have us rely.

We next address VELCO's contention that our November 10 Order erroneously concluded that relief under Section 248(k) is unavailable when a Certificate of Public Good has already issued for a project. We conclude that VELCO has raised legitimate concerns that, under such an interpretation of the statute, there might arise circumstances under which the Board

2. See Order of 1/28/05 at 215.

would be unable to grant appropriate relief when a true emergency exists. For this reason, and because VELCO has withdrawn its pending request for Section 248(k) relief, we grant reconsideration of our November 10 Order, limited to this specific issue, and we hereby modify our November 10 Order as follows. The language on page 3 of that Order, from line 8 (starting with "First, VELCO's October 18 Petition") through line 20 (ending with "do not apply"), is struck, and is replaced with the following:

First, we do not reach the issue of whether a waiver under Section 248(k) is available for a project that has already received a Certificate of Public Good. Subsequent to the initial issuance of this Order, VELCO filed a request for reconsideration, and withdrew its request for Section 248(k) relief. Therefore, we need not and do not address the issue.

SO ORDERED.

Dated at Montpelier, Vermont, this 14th day of December, 2005.

_____)	
)	PUBLIC SERVICE
)	
s/David C. Coen)	BOARD
)	
)	OF VERMONT
s/John D. Burke)	

OFFICE OF THE CLERK

FILED: December 14, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)